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| 10/560,489   | 04/27/2006  | Grant Thomas Rawlin  | 2354/350            | 3126             |
| 7590<br>Gunnar G. Leinberg<br>Nixon Peabody<br>Clinton Square<br>P O Box 31051<br>Rochester, NY 14603-1051 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| SANDERSON, JOSEPH W  |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/560,489

**Applicant(s)**

RAWLIN ET AL.

**Examiner**

Joseph W. Sanderson

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 12/12/05.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 12 December 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Drawings***

3. Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the means by which the milk not collected by the bag continues on to the milk vat as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Specification*

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means"

and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. The abstract of the disclosure is objected to because it contains legal phrasology (e.g. "comprising," "said," "means," etc.). Correction is required. See MPEP § 608.01(b).
7. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Objections***

8. Claims 10-12 are objected to because of the following informalities:  
  
The claims should consistently use either "liters" or "litres."  
  
Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 3 and 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the transfer system as comprising a space between collar and inlet conduit, however it is unclear if this would require two such spaces if option (a) is chosen in claim 2.

Claim 14 recites the limitation "the lid" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "said fluid inlet" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 cites a conduit in the fluid inlet in line 2, however it is unclear if this is the same conduit as in claim 1 or an additional conduit.

Claim 14 recites the limitation "said wall" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the inlet conduit comprising a retaining system, however it is unclear if this is the same system as in claim 1 or an additional system.

Claim 21 cites a vacuum line for collecting small amounts of liquid, however it is unclear if this is the same vacuum line as in claim 20 or an additional line.

Claim 21 cites a vacuum line downstream of the apparatus, however it is unclear how the line can be a part of the apparatus (“further comprising”) and downstream of the apparatus (i.e. not a part of) at the same time.

Claim 23 appears to cite a conditional action of use, but since it does not provide the action, it is unclear what condition is claimed.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-9, 13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Havirco (US 3 032 037).

Regarding independent claim 1:

Havirco discloses an apparatus capable for use with a milking machine comprising one or more teat cups and a vacuum source providing a pulsed vacuum in the teat cups, for collecting a small volume of liquid for cold storage, the apparatus comprising:

- a flexible bag (10) comprising a collar (10x) defining an opening;

- a housing (20) for the flexible bag comprising an inlet conduit (29) extending into the housing for receiving the liquid from the one or more teat cups and comprising an opening (26) within the housing for delivering the liquid;

- a port (31) for providing a vacuum within the housing from said vacuum source; and

- a retaining system (14 and 15) that retains the collar of the flexible bag about the inlet conduit so that the bag receives liquid from the inlet opening; and

- a transfer system (see below) that transfers the vacuum from the port for providing a vacuum within the housing to the inlet conduit when the collar of the flexible bag is retainable about the inlet conduit by the retaining system.

Regarding claims 2, 3, 5 and 6:

The discussion above regarding claim 1 is relied upon.

As best understood, Havirco discloses the transfer system as a space between the collar and inlet conduit when the collar is retained about the conduit by the retaining system (the space created between collar 10x and conduit 29 when conduit is inserted).



Regarding claims 4, 7 and 16:

The discussion above regarding claims 1 and 6 is relied upon.

Havirco discloses the collar as relatively rigid compared to the flexible bag (no movement vs. much movement as shown by the solid and dotted lines), sufficiently rigid to maintain its shape, and comprising a flange (portion wrapped about top of 25) to cooperate with the retaining system to retain the collar.

Regarding claim 8:

The discussion above regarding claim 7 is relied upon.

Havirco discloses a lay flat bag (as in Fig 8).

The claim is a product-by-process claim, and only the resulting structure is considered.

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Havirco discloses the housing as sufficiently rigid to retain shape under vacuum (claim 12).

Regarding claim 13:

The discussion above regarding claim 1 is relied upon.

Havirco discloses the housing comprising a lid (20c) forming the top wall and a body (20a) forming side and bottom walls.

Regarding claim 15:

The discussion above regarding claim 1 is relied upon.

As best understood, Havirco discloses the retaining system as above regarding claim 1.

Regarding claim 17:

The discussion above regarding claim 1 is relied upon.

Havirco discloses the bag comprising an internal pocket (a portion of the inside of the bag) to allow sampling of the contents.

Regarding claim 18:

The discussion above regarding claim 17 is relied upon.

Havirco discloses a pocket (as noted above).

The claim is a product-by-process claim, and only the resulting structure is considered.

13. Claims 1-3, 5, 6, 10-12, 17, 19, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Todd et al. (WO 1996/008441).

Regarding independent claims 1 and 24:

Todd discloses an apparatus for use with a milking machine comprising one or more teat cups and a vacuum source providing a pulsed vacuum in the teat cups, for collecting a small volume of liquid for cold storage, the apparatus comprising:

a flexible bag (200; made from a “non-rigid plastic material,” page 4, lines 10-11) comprising a collar (210) defining an opening;

a housing (100) for the flexible bag comprising an inlet conduit (119) extending into the housing for receiving the liquid from the one or more teat cups and comprising an opening (through which the conduit extends) within the housing for delivering the liquid;

a port (107) for providing a vacuum within the housing from said vacuum source; and

a retaining system (lug around 117, at minimum) that retains the collar of the flexible bag about the inlet conduit so that the bag receives liquid from the inlet opening; and

a transfer system (see below) that transfers the vacuum from the port for providing a vacuum within the housing to the inlet conduit when the collar of the flexible bag is retainable about the inlet conduit by the retaining system.

Regarding claims 2, 3, 5 and 6:

The discussion above regarding claim 1 is relied upon.

As best understood, Huber discloses the transfer system as a space between the collar and inlet conduit when the collar is retained about the conduit by the retaining system (the space created between collar and conduit when conduit is inserted as seen in Fig 3).

Regarding claims 10-12:

The discussion above regarding claim 1 is relied upon.

Todd discloses the bag holding 20 liters (a “20 liter jerry can”).

Regarding claim 17:

The discussion above regarding claim 1 is relied upon.

Todd discloses the bag comprising an internal pocket (a portion of the inside of the bag in the handle of the bag) to allow sampling of the contents.

Regarding claim 19:

The discussion above regarding claim 17 is relied upon.

Huber discloses the pocket as less than 5% of the total volume.

Regarding claim 23:

The discussion above regarding claim 1 is relied upon.

Todd discloses collecting colostrum, which may be considered "specialty milk," and is deemed to meet the claim as there is no action recited when this milk is collected.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. ('441).

The discussion above regarding claim 12 is relied upon.

Todd discloses a lid (109) comprising a fluid inlet (the opening for the fluid) comprising a conduit (the inlet conduit) extending down from the wall of the lid to provide an inlet port, but does not disclose the lid containing the port for providing the vacuum.

Todd discloses an alternative embodiment wherein the vacuum port is in the lid (Fig 1).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Todd to locate the vacuum port in the lid as taught by Todd as this is a well-known predictable functionally equivalent position for providing a vacuum force in the container.

16. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. ('441) in view of Karnath et al. (US 3 242 903).

The discussion above regarding claim 1 is relied upon.

Todd discloses a fluid collector for a milking machine comprising a plurality of teat cups (page 6, lines 5-6) a vacuum source for applying a vacuum to the teat cups (page 6, lines 5-7), and a vacuum line for providing the vacuum (connected to 117), but does not specifically disclose a reservoir for collecting relatively large volumes of milk, a pressure oscillation system providing the pulsating vacuum to the teat cups, or a vacuum line for providing small amounts of liquid downstream of the apparatus.

Karnath teaches a milking machine which separates out a small amount of liquid having a reservoir for larger amounts of liquid (20), a pressure oscillation system (valve 9), and a vacuum line downstream (25) for collecting relatively small amounts of liquid (smaller than 20).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Todd to use the components of Karnath for the well-known advantages of collecting the main milk supply for use rather than merely sample, to properly operate the teat cup pumps, and to further distribute the milk supply into smaller containers for ease of shipping, distribution, storage, etc.

17. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huber ('037).

Huber discloses an apparatus for collecting liquids, but does not disclose a case for freezing the liquids to provide a thickness of less than 20 cm.

The examiner takes Official Notice that freezers are well-known in the art as cases for freezing liquids for later use.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Huber to freeze the liquid in a freezer as the examiner takes Official Notice that freezers are well-known in the art for freezing liquids for later use.

Further, it would have been an obvious matter of design choice to ensure the filled and frozen bags did not expand past 20 cm, since applicant has not disclosed that this thickness solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with the frozen bags as provided by Huber.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is (571)272-0474. The examiner can normally be reached on M-F 7:00 am - 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Carone/  
Supervisory Patent Examiner, Art Unit 3641

/Joseph W. Sanderson/

JWS